IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07-00087-07-CR-W-NKL
	)	
MARK DELI SILJANDER,	)	
	)	
Defendant.	)	

GOVERNMENT'S SENTENCING MEMORANDUM AND OPPOSITION TO DEFENDANT'S MOTION FOR DOWNWARD DEPARTURE

The United States of America, by Beth Phillips, United States Attorney for the Western District of Missouri and undersigned counsel, respectfully submits this sentencing memorandum in the above captioned matter. For the reasons set forth below, the Government opposes defendant Mark Deli Siljander's motion for a downward departure, and respectfully recommends that the Court sentence the defendant to a 16-month term of imprisonment on Count 32, and at least a 36 to 48-month term of imprisonment on the single-count Information, both terms to run concurrently, followed by a three-year term of supervised release.

I. Offenses of Conviction

On July 7, 2010, on the eve of trial, the defendant pled guilty to Count 32 of the Second Superseding Indictment in this case, which charged him with obstruction of justice in violation of 18 U.S.C. §§ 1503(a) and 1512(i), and to a single-count Information which charged him with violation of the Foreign Agents Registration Act, 22 U.S.C. §§ 612 and 618.

The Information charged that, from approximately May through September 2004, after receiving money and checks from Columbia, Missouri, The defendant knowingly and willfully acted as an agent of a foreign principal, without having first registered with the Attorney General of the United States. Specifically, the Information charged that, at various times in and after June 2004, The defendant contacted persons at the United States Agency for International Development (USAID), the United States Department of Justice, the United States Senate Finance Committee, and the United States Department of the Army, in an effort to have Islamic American Relief Agency (IARA) removed from the USAID list of debarred entities, and to remove IARA from the Senate Finance Committee list of organizations suspected to support terrorism, knowing that IARA was controlled by and a part of an organization headquarterd in and directed from Khartoum, Sudan.

Count 32 of the Second Superseding Indictment charged that, beginning on or about December 13, 2005, and continuing until at least April 26, 2007, The defendant corruptly endeavored to obstruct and impede the due administration of justice in an investigation conducted by a federal grand jury of the Western District of Missouri by willfully making materially false, fictitious and fraudulent statements and representations to agents of the Federal Bureau of Investigation and to Assistant United States Attorneys acting on behalf of the grand jury, in an investigation involving national security and terrorism financing.

II. The Offense Conduct and Relevant Conduct

As set forth in the factual basis to The defendant's plea agreement (D.E. 539:2-6), the offense conduct was as follows:

The defendant, Mark Deli Siljander (Siljander), is a United States citizen and was, at all times relevant, a resident of Virginia. Siljander, a former member of the United States House of

Representatives from the State of Michigan, operated a consulting business known as Global Strategies, Inc. At no time relevant was Siljander a registered agent of any "foreign principal," as that term is defined in 22 U.S.C. § 611(b).

Co-defendant Abdel Azim El-Siddig (El-Siddig) is a naturalized United States citizen and resident of Illinois. At all times relevant, El-Siddig was associated with, and worked as a fund-raiser for, the Islamic American Relief Agency.

Co-defendant Islamic American Relief Agency (IARA) was an Islamic charitable organization based in Columbia, Missouri, that was the United States office of an international organization having more than 40 international offices, headquartered in Khartoum, Sudan. Originally, the Columbia, Missouri office of IARA was incorporated under the name "Islamic African Relief Agency-USA," and also was known as the Islamic African Relief Agency-United States Affiliate and IARA-USA. On May 25, 2000, the Islamic African Relief Agency-USA legally changed its name to the Islamic American Relief Agency.

At all times relevant, co-defendant Mubarak Hamed (Hamed) was the Executive Director of IARA, in Columbia, Missouri.

The organization of which IARA was a part, headquartered in Khartoum, Sudan, was known as the Islamic African Relief Agency, the acronym IARA, and also by the name Islamic Relief Agency, and the acronym ISRA. The organization had more than 40 international offices, over which the Khartoum, Sudan headquarters exercised control. This control included the authority to appoint the chief executives of each international office, the authority to transfer personnel between international offices, the authority to decide what projects and goals the subordinate offices would and did undertake, and the authority to direct funds raised by one international office to projects

undertaken by another office. Based on the degree of control exercised by the IARA/ISRA headquarters in Khartoum, Sudan, the IARA office in Columbia, Missouri was a part of that organization, and was therefore a "foreign principal" as that term is defined in 22 U.S.C. § 611(b)(3).

Beginning about January 1, 1997, IARA entered into a series of written cooperative agreements with the United States Agency for International Development (USAID) for two relief projects in Mali, Africa. The agreements were terminated by USAID on or about December 19, 1999, and as of December 20, 1999, IARA was prohibited from obtaining any further USAID contracts. IARA was informed that the agreements were terminated because they were not in the United States' national interest. Later, IARA was debarred from any procurement transactions with any part of the Executive Branch of the United States government.

On January 14, 2004, IARA was included on a United States Senate Finance Committee list identifying charities suspected of funding terrorism. Shortly thereafter, Hamed and the Board of Directors decided that IARA should hire a person or persons to advocate for IARA's removal from the list.

Violation of the Foreign Agents Registration Act

On January 24, 2004, with the assistance of El-Siddig and Siljander, Hamed, on behalf of IARA, hired a former United States Congressman and registered lobbyist identified by the initials "R.P.H.," to advocate for IARA's removal from the list and reinstatement as an approved government contractor, by gathering information and meeting with individuals and agencies of the United States government. On January 24, 2004, Hamed signed a $15,000 check that was issued to R.P.H., drawn on IARA's principal bank account. For his assistance in brokering the transaction, Siljander received $6,000 in referral fees from R.P.H.

Between March and May, 2004, Hamed and El-Siddig, on behalf of IARA, hired Siljander to advocate for IARA's removal from the list and reinstatement as an approved government contractor, by gathering information and meeting with individuals and agencies of the United States government.

Hamed, El-Siddig and Siljander each knew that IARA was controlled by the IARA/ISRA headquarters, in Khartoum, Sudan, and knowingly and willfully agreed with each other to mis-characterize Siljander's efforts and relationship with IARA. Hamed's discussions with Siljander included two telephone conversations, which took place April 28, 2004, and May 6, 2004. In those conversations, they discussed the work Siljander was performing on behalf of IARA. Regarding the method of payment for the services, Siljander told Hamed, ". . . I think we oughta do this number one through foundations and not professionally," and advised Hamed to transfer funds from IARA to himself by funneling them through nonprofit entities. Siljander then relayed the details regarding how to transfer the funds to Hamed through El-Siddig.

On May 24, 2004, El-Siddig signed a $25,000 check that was issued to Siljander, drawn on an account at LaSalle Bank, in Chicago, Illinois, held in the name of IARA, which was made payable to an entity called the International Foundation. On May 27, 2004, Hamed signed a $25,000 check that was issued to Siljander, drawn upon IARA's North Mali account, which was made payable to an entity called the International Foundation. On August 26, 2004, Hamed signed two checks that were issued to Siljander, each in the amount of $12,500; the first was drawn upon IARA's North Mali account, and was made payable to an entity called the National Heritage Foundation, and the second was drawn upon IARA's Mali Project account, and was also made payable to National Heritage Foundation. All of these checks, totaling $75,000, were payments for Siljander's services.

At various times in and after June, 2004, Siljander acted as an agent for a foreign principal in that he contacted persons at USAID, the United States Department of Justice, the United States Senate Finance Committee, and the United States Department of the Army, in an effort to have IARA removed from the USAID list of debarred entities, and to remove IARA from the Senate Finance Committee's list of charities suspected of funding terrorism.

At various times between June and October 2004, El-Siddig reported to IARA on the progress of Siljander's efforts on behalf of IARA.

Siljander admitted that he knowingly and willfully acted as the agent of a foreign principal without having first registered with the Attorney General of the United States.

Obstruction of Justice

The defendant knew that IARA was the subject of a grand jury investigation. On October 13, 2004, search warrants were executed upon the premises of IARA, and at Hamed's residence in Columbia, Missouri. The same day, IARA along with five individuals in the IARA/ISRA network, located overseas, was designated a Specially Designated Global Terrorist (SDGT) by OFAC. The defendant knew of these government actions very shortly after they took place.

On December 13, 2005, in Arlington, Virginia, FBI Special Agents served the defendant with a grand jury subpoena and interviewed him in connection with the investigation. During that interview, the defendant made the following false statements, as charged in Count 32 of the Second Superseding Indictment: (1) that he had not been hired to perform any advocacy services for IARA; (2) that he had not performed any advocacy services for IARA; and (3) that the payments he had received from the IARA were charitable donations intended to assist him in writing a book about bridging the gap between Islam and Christianity.

On March 6, 2007, the grand jury returned the original indictment in this case. On April 23, 2007, federal prosecutors provided the defendant, through his attorneys, with a "proffer letter" confirming that he was a target of the continuing investigation, and setting forth the ground rules for an interview. The letter advised the defendant that should he "intentionally provide any false, incomplete, inaccurate or misleading information or testimony," any statement he made could be used to prosecute him for other criminal violations, including obstruction of justice.

On April 26, 2007, at the United States Attorney's Office in Kansas City, Missouri, the defendant signed the bottom of this letter, acknowledging its terms, as did his attorneys. After signing the proffer letter, Siljander was interviewed by FBI Special Agents and prosecutors, in the presence of his attorneys. During that interview, Siljander made the following false statements as charged in Count 32 of the Second Superseding Indictment: (1) he had performed no services in exchange for the money he received from IARA; (2) the payments he had received from IARA were charitable donations intended to assist him in writing a book about bridging the gap between Islam and Christianity; and (3) he had not spoken to anyone from IARA on the telephone about performing services for the organization, or for any reason other than to thank the organization for its "donation."

Siljander admitted that, when he made each of the statements identified above, he then well knew and believed that each statement was false, in that: (1) he had been hired by IARA to perform services; (2) he had performed services for IARA; (3) the payments he had received from the defendant IARA were compensation for the services he had been hired to perform, not charitable donations; and (4) he had discussed performing services for IARA, and routing payment for those services through non-profit foundations, on the telephone with Hamed and El-Siddig. Further,

Siljander admitted that the above false statements were material, because the grand jury sought information that included: (1) whether the IARA had retained anyone to perform advocacy services; (2) whether anyone had performed advocacy services on behalf of IARA; (3) whether IARA had used funds it had received from charitable donations or USAID funds to pay for advocacy services; (4) whether anyone had engaged in monetary or financial transactions involving charitable donations or USAID funds and, if so, the nature and purpose of said transactions; and (5) what discussions had taken place regarding those matters, and who had been involved in any such discussions. Finally, Siljander admitted that by making the false statements, he did so with the intent to obstruct and impede the due administration of justice.

III. Discussion

A. Applicable Law

Although the United States Sentencing Guidelines are no longer mandatory, *United States v. Booker*, 543 U.S. 220 (2005), sentencing still begins with a properly calculated advisory Sentencing Guidelines range, if such a range can be calculated. *See Gall v. United States*, 128 S. Ct. 586, 596 (2007); *Rita v. United States*, 127 S. Ct. 2456, 2464-65 (2007); *Booker*, 543 U.S. at 245-46; *United States v. Plaza*, 471 F.3d 928, 930 (8th Cir. 2006). Next, the Court must decide whether a traditional departure under the Guidelines is appropriate, thus creating an advisory Guidelines sentencing range. *Plaza*, 471 F.3d at 930. After calculating the advisory Guidelines range, the Court considers that range, along with all the factors listed in 18 U.S.C. § 3553(a), in arriving at the final sentence. *Kimbrough v. United States*, 128 S. Ct. 558, 564 (2007); *Plaza*, 471 F.3d at 930. If the conviction is not listed and no analogous guideline can be promulgated, the provisions of 18 U.S.C. § 3553 would apply. *See* U.S.S.G. § 2X5.1.

The Guidelines remain a point at which to start the sentencing analysis, though they are only a part of the calculation. *United States v. De la Cruz Suarez*, 601 F.3d 1202, 1223 (11th Cir. 2010). A sentence within the advisory Guidelines range is not automatically reasonable. *Gall v. United States*, 552 U.S. 38, 50 (2007). However, at the appellate level, a presumption of reasonableness can be applied to a sentence within the Guidelines range. *Rita v. United States*, 551 U.S. 338, 347 (2007).

B. The Guidelines Calculation

1. PSR Recommendation

The final Presentence Investigation Report (PSR) was filed December 12, 2010. (DE 567). The Sentencing Guidelines calculations set forth therein (¶¶ 39-52) recommend a base offense level of 14 for both the obstruction of justice and FARA violations, and a two-level reduction for acceptance of responsibility, resulting in an a recommended total offense level of 12. With a criminal history category of I, the recommended advisory Guidelines range for incarceration would be between 10 and 16 months. (PSR ¶ 80.)

2. Government's Position

Regarding the obstruction of justice violation, the Government agrees with the calculation set forth in the PSR, which is consistent with the parties' stipulations. (D.E. 259 ¶ 10(b).)

There is no guideline expressly promulgated for the felony FARA violation. The Government respectfully disagrees with the Probation Office's recommendation that the most analogous guideline is that for economic crimes, U.S.S.G. § 2B1.1. As stipulated in the plea agreement (D.E. 259 ¶ 10(c)), given the unique circumstances of this case, there is not a sufficiently

analogous guideline.[1] Therefore, pursuant to U.S.S.G. § 2X5.1, the provisions of 18 U.S.C. § 3553 control.[2]

The defendant attempts to compare the FARA felony offense in this case as akin to the "regulatory-type" offense of say, failing to obtain the requisite license to undertake recreational hunting in a federal park. The PSR compares the FARA felony offense to an economic crime. Both positions are mistaken. To the extent that the description of a "regulatory" offense means that the offense is *malum prohibitum* (i.e. statutory and not derived from "common law,") then perhaps the failure to register as a foreign agent with the Department of Justice is a "regulatory" offense. To say, however, that a criminal offense is a "regulatory" offense does not describe or say much apart from seeking to label the offense. In other words, such a label on its own has no or little significance, meaning, or effect. Depending on the definition, a number of federal crimes might be characterized as "regulatory" offenses (e.g. felon in possession of a firearm, drug trafficking, tax evasion, IEEPA violations, and various white collar crimes). All carry significant levels of punishment. Here, for example, the FARA charge carries a maximum penalty of up to five years of imprisonment, a

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[1]The Government notes that in his response to the preliminary PSR, the defendant also objected the PSR's use of U.S.S.G. § 2B1.1 as an analogous provision under the Guidelines. The Government agreed with the defendant's objection, but disagreed with its rationale. In their attempt to distinguish the FARA charges from the class of offenses covered by the general theft and fraud guideline, U.S.S.G. § 2B1.1, Defendants Siljander and El-Siddig argued that unlike theft or embezzlement, FARA violations are purely regulatory offenses, which merely focus on whether a proper filing was made, as opposed to a felony that violates society's moral standards. The defendants further argued that if the Court decided to identify an analogous guideline, the Court should compare specific characteristics to which the defendants pleaded guilty (i.e., other regulatory offenses, where a defendant failed to fill out the proper paperwork).

[2]The PSR correctly notes that, for felony charges in which no guideline expressly has been promulgated, U.S.S.G. §2X5.1 directs that the most analogous Guideline is applied. If there is not a sufficiently analogous guideline, then the provisions of 18 U.S.C. § 3553 would control.

$10,000 fine, and a three year term of supervised release. Additionally, unlike a fraud case, the FARA offense in this case helps to protect the heart and essence of our national security and our political process from improper influence by foreign principals. FARA seeks to assist in the aim of informing and advising properly designated officials and the public of attempted foreign influence, control or direction within the political process or in political advocacy before Congress or the administration of the Chief Executive. The United States Supreme Court has stated that "[t]he statute itself explains the basic purpose of the regulatory scheme." *Meese v. Keene*, 481 U.S. 465, 469 (1987). Specifically, FARA was originally enacted:

> [T]o protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities.

Id. (quoting 56 Stat. 248-49 (1942), 22 U.S.C. § 611 Note on Policy and Purpose of Subchapter); *see also Viereck v. United States*, 318 U.S. 236, 244 (1943); *Attorney General v. Irish People*, Inc., 684 F.2d 928, 937-45 (D.C.C. 1982).

Over the years, FARA's focus has gradually shifted from Congress' original concern about the political propagandist or subversive seeking to overthrow the Government, to lobbyists and persons acting on behalf of foreign governments or foreign principals in an attempt to influence the decision making process of United States government officials . However, FARA's purpose remains the same, namely that government officials and the public generally should be made aware of the identify and actions of those who act on behalf of a foreign principal. The idea is a frequently recurring one in modern government: public disclosure is needed in order for the government

officials and the public to accurately to evaluate such activities. This case provides an excellent example. The defendants here were involved in either providing representation or conspiring to provide representation to IARA – an organization which the defendants admit they then knew was part of an international network controlled from Sudan, an organization which was then publicly identified by a Congressional committee as a suspected source of terrorism funding, and an organization which was ultimately designated by the Treasury Department as a Specially Designated Global Terrorist. The parties have agreed that given the unique circumstances of this case, there is not a sufficiently analogous guideline provision. Therefore, the provisions of 18 U.S.C. § 3553 should control as to the FARA felony charge.

C. Defendant's Motion For Downward Departure Is Without Merit and Should Be Denied

As part of Defendant Siljander's sentencing memorandum filed on January 4, 2012, Siljander seeks a downward departure under U.S.S.G. §§ 5H1.11 and 5K2.20. (D.E. 628.) Both claims are bootless and without merit. As an initial matter, Siljander concedes, as he must, that under U.S.S.G. § 5H1.11, "[c]ivic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a departure is warranted." Courts may not leniently interpret the requirement of extraordinary circumstances to grant a downward departure. *See, e.g., United States v. Rybicki*, 96 F.3d 754, 758 (4th Cir. 1996) (defendant was a highly-decorated Vietnam veteran, had saved an innocent civilian during the My Lai massacre, and had served with the Secret Service; these deeds did not warrant a departure). The Sentencing Guidelines are clear that a defendant's record of charitable work and community service are a discouraged justification for a sentencing departure. *See United States v. DeMasi*, 40 F.3d 1306,

1324 (1st Cir.1994). Discouraged-feature factors are not usually relevant to a departure decision. *See Koon v. United States*, 518 U.S. 81, 95 (1996). A court may depart only if a discouraged factor is present to an exceptional degree or in some other way that makes the case different from the ordinary case where the factor is present. *Id*. at 96. In *United States v. Haversat*, 22 F.3d 790, 795-96 (8th Cir. 1994), the Eighth Circuit reversed a district court's departure decision based on the defendants's good character. "Charitable or volunteer activities conceivably can serve as a basis for downward departure but *only* where those activities are truly exceptional in nature." *Id*. (*emphasis added*). The Court in *Haversat* went on to say that "Haversat's charitable and volunteer activities, while considerable, do not make him an atypical defendant in antitrust price-fixing cases. . . . It would appear that high-level business executives, those who are in a position to commit Sherman Act violations, also enjoy sufficient income and community status so that they have the opportunities to engage in charitable and benevolent activities." *Id*. at 796; *see also United States v. Woods,* 159 F.3d 1132, 1136 (8th Cir. 1998) (A defendant's charitable conduct is not an appropriate basis for a downward departure unless it is exceptional); *United States v. Neil*, 903 F.2d 564, 565-66 (8th Cir. 1990); *United States v. Groene*, 998 F.2d 604, 607-08 (8th Cir. 1993) (reversing as clear error the district court's finding that circumstances demonstrated that defendant's community service was sufficiently extraordinary to justify downward departure); *United States v. Morken*, 133 F.3d 628, 629 (8th Cir. 1998) ("[Defendant's] record of good works is neither exceptional nor out of the ordinary for someone of his income and preeminence. . ."); *United States v. McHan*, 920 F.2d 244, 247 (4th Cir.1990) (defendant's work history, family ties and responsibilities, and extensive contribution to the town's economic well-being could not justify downward departure). *But see*

United States v. Huber, 462 F.3d 945 (8th Cir. 2006) (the district court did not err in finding that Huber's lifetime contributions to his community warranted a minimal departure).

In the present case, it is challenging to understand what specific acts of exceptional charitable conduct Siljander is relying on in support of his motion. He argues as a general matter that he "worked for peace and sought to encourage conflict resolution in disparate places in the world." (D.E. 628:2.) Siljander appears to break his efforts into two parts: those activities which occurred while he served as a Congressman, and those activities that occurred after he left office.

Siljander first claims that, while a Congressman, he was a "champion for humanitarian assistance to Africa and sponsored bills opposing apartheid in South Africa." (D.E. 628:7.) However, "if a public servant performs civic and charitable work as part of his daily functions, these should not be considered in his sentencing because we expect such work from our public servants." *United States v. Wright*, 363 F.3d 237, 249 (3rd Cir. 2004), *citing United States v. Serafini*, 233 F.3d 758, 772 (3rd Cir. 2000); *United States v. Vrdolyak*, 593 F.3d 676, 683 (7th Cir. 2010).

Siljander's claims of exceptional public service activities after he lost his bid for re-election in 1987 are tougher to corroborate. He argues in his sentencing memorandum that his private sector activities were more akin to a ministry than an occupation and that he has "forfeited personal comfort and financial security," to "promote peace and justice worldwide." (D.E. 628:7,8.) A search of public records, however, belies this claim. Records from the Assessor's office in Fairfax County, Virginia, reveals that, on February 6, 2009, Siljander sold his single family residence located at 736 Forest Park Road, Great Falls, Virginia, for $1,284,500.00. (*See* Exh. 1.) Siljander had lived in that residence since 1998. FARA records reveal that Siljander was registered to do lobbying activities for the Evans Group, Ltd. from January 9, 1990, through January 8, 2002, on behalf of the following

two foreign principals: Republics of Cyprus and Nigeria. He had listed his job title as "consultant." Siljander also registered briefly as a lobbyist in 1998 for Advantage Associates, another firm that employs ex-lawmakers.

Additionally, Siljander formed his own company, Global Strategies, Inc., where he has worked as a consultant. A review of the available federal court opinions involving Siljander clearly undercuts Siljander's representations of noble motives and selfless service:

(1) United States v. Warren Charles Gregory

In the early 1990s, Siljander was involved as a witness in a criminal case involving funds that had been embezzled from the Michigan state legislature, which were then paid to Siljander for for his assistance brokering an arms sale to Croatia. The underlying facts are found in *United States v. Gregory,* 125 F.3d 856 (6th Cir. 1997) (unpublished). (*See* Exh. 2.) While Siljander was not a defendant in this case, he was a witness due to his receipt of stolen funds. The case involved three individuals in Michigan – two employees of the state legislature and an attorney. *Id.* One of the legislative employees embezzled over $800,000 from a petty cash fund for which he was responsible. *Id.* Then, in 1991, the three formed a company, Global Consultants, to sell military arms and equipment to Croatia. *Id*. According to the opinion, Siljander and former Michigan state senator Ed Fredericks promised to provide the three access to an arms dealer in exchange for a $20,000 fee. *Id*. The three defendants (Gregory, Morberg and Hodari) obtained this fee by embezzling it from the petty cash fund. The money was then wired to Siljander's company Global Strategies, Inc. *Id.* Then the three of them traveled to Washington, D.C., to meet Siljander and the arms dealer. However, the venture ultimately proved unsuccessful. *Id.* There is no indication in the opinion that Siljander

knew the funds were stolen when he received them, nor whether Siljander returned the stolen funds to the State of Michigan. This appears to be a purely for profit business deal on Siljander's part.

(2) United States v. James F. O'Connor

In the mid-1990s, Siljander was one of the three principals involved in a venture which resulted in the conviction of his two cohorts for immigration fraud. *See United States v. O'Connor, et. al*, 158 F. Supp. 2d 697 (E.D. Va. 2001) (*See* Exh. 3). Siljander was paid as a marketing consultant for InterBank. *Id*. at 702. Siljander introduced the two defendants to an investment visa program where aliens could obtain lawful permanent resident status in the United States if they invested $500,000 in a new commercial enterprise located in a rural or high-unemployment area of the United States. The defendants created false evidence (through the use of the sham loan transactions and misleading print screens of bank balances showing that each alien client had invested the requisite amount of money into the program.

In 1997, Siljander wrote a ten page "doctoral dissertation" paper, where he claimed that the immigration project "was handled by me, personally in every respect." (*See* Exh. 4.)[3] However, two years later, Siljander denied being involved when the Office of Inspector General - U.S. Department of State interviewed him during the investigation of InterBank. (*See* Exh. 5, memorandum of interview of Siljander dated June 4, 1999.)

[3]Siljander has repeatedly held himself out to the public as having both an honorary and an earned Ph.D. While Siljander may possess diplomas from Coral Ridge Baptist University (Coral Ridge) and George Wythe College, now known as George Wythe University (collectively, "Wythe"), two unaccredited institutions known to be diploma mills, neither constitutes an earned Ph.D. It appears that Coral Ridge no longer exists, but as for Wythe, Siljander paid $2,700, wrote a 10-page "dissertation," and received a "doctorate," although the paper Siljander received his degree for appears to contain no original research, empirical data or citations to primary literature, and no theoretical findings to advance the field of study. Rather, the "dissertation" is simply a descriptive account of his involvement in InterBank's immigration program and his involvement in the program.

Siljander testified as a witness in the case, which was tried from March 28, 2001, to April 18, 2001. The defendants were convicted of money laundering and immigration fraud.

(3) Arelma, S.A.

In 2000, Siljander served as a member of a three-person board of directors of Arelma, S.A., a Panamanian corporation formed on behalf of former Philippine President Ferdinand Marcos and First Lady Imelda Marcos. *See Republic of Philippines v. Pimental*, 553 U.S. 851, 857 (2008). The Marcoses had formed Arelma in the 1970s, and Arelma opened a brokerage account with Merrill Lynch at the same time. *Id.* They began funneling money into the account, and by 2000, the account had grown to approximately 35 million dollars. *Id*.

Alleged crimes and misfeasance by Marcos during his presidency became the subject of worldwide attention and protest. *Id*. A class action lawsuit by and on behalf of some 9,539 of his human rights victims was filed against Marcos and his estate, among others. *Id*. The class action was tried in the United States District Court for the District of Hawaii, and resulted in a nearly $2 billion judgment for the class. *See Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996).

In 2000, Merrill Lynch received telephone calls and correspondence from an individual identified as John Burns, who claimed that he held powers of attorney granted to him by defendants Imelda R. Marcos and by Ferdinand R. Marcos, Jr., in their individual capacities and as co-executors of the Marcos estate, in relation to Arelma. *See* Joint Appendix filed with the U.S. Supreme Court, 2006 U.S. Briefs 1204; 2008 U.S. S. Ct. Briefs LEXIS 58. (*See* Exh. 6.) Burns claimed to be acting in his alleged capacity as President and Chief Executive Officer of Arelma, and on behalf of the new board of directors, comprised of Siljander and two others, directed a transfer of the assets in the brokerage account to another broker-dealer, presumably one beyond the jurisdiction of the U.S. court

system. *Id.* The original board of directors for Arelma disputed Burns' contention and Merrill Lynch refused to transfer the money. *Id.* Merrill Lynch then filed an interpleader to determine who should get the money. *See Merrill Lynch, Pierce, Fenner and Smith Inc. v. Aremla*, 587 F.3d 922, 923 (9th Cir. 2009). In 2004, the District Court for Hawaii held that the tortured victims were entitled to the money and the Ninth Circuit affirmed. *Id.* However, in 2008, the Supreme Court reversed the decision and dismissed the interpleader on the grounds that the Philippine government could not be joined as a party. *Id*., citing *Republic of Philippines v. Pimental*, 553 U.S. 851 (2008). The litigation is ongoing. Although the extent of Siljander's involvement as a board member of Arelma is unclear, he appears to acknowledge some active role on behalf of Imelda Marcos, which would seem to be for profit and contrary to the interests of the human rights' victims.[4]

(4) Energy Capital Co. v. Carribbean Trading and Fidelity Corp.

In an effort to recover money from a Nigerian oil company, Carribean Trading and Fidelity Corp (CTFC) hired Energy Capital Co. (ENC) to help recover the funds. *See Energy Capital Co. V. Carribean Trading and Fidelity Corp*., 1996 WL 157498 (unreported). CTFC then backed out of the agreement, alleging that CTFC had be fraudulently induced into the agreement with ENC based on misrepresentations made by Siljander, working as a consultant. *Id*. In short, CTFC alleged that ENC introduced CTFC representatives to Siljander, who "boasted about his connections with the Nigerian government, stated that he had been a lobbyist in the United States for the Nigerian government, and "would deal directly and only with the Sultan of Sokoto, Nigeria, in resolving

[4]The website for Siljander's business identifies the broad areas of services the company provides and cites specific examples of those broad categories. Specifically, under the "Public Relations" category, the website indicates the company "[a]ssisted in composing board of directors and advisors for prominent individuals," and "[a]ided a former First Lady (non US) regarding personal financial troubles." (*See* Exh. 7.)

CTFC's efforts to recover the funds from the Nigerian oil company." *Id*. CTFC then tried to rescind its agreement with ENC because it "became obvious that Siljander did not in fact have any connection with the Sultan of Sokoto. *Id.* ENC prevailed in a lawsuit with CTFC because CTFC failed to show that ENC had a duty to disclose the falsity of Siljander's statements to CTFC. *Id*.

As a review of these cases demonstrates, it is difficult to reconcile the Mark Siljander portrayed in these cases with his claim that his private sector activities were more akin to a ministry, and that he has forfeited personal comfort and financial security to promote peace and justice worldwide.

Siljander also attempts to bolster his image by referencing passages and stories from the book he collaborated on with ghost writer John David Mann. In *A Deadly Misunderstanding*, Siljander tells stories of his trips overseas and his attempts to bring people of different religions together. The problem arises, however, when one tries to corroborate Siljander's tales. For example, in the first pages of the book, Siljander claims that Yasser Arafat ordered his death because of the intensity of his support for Israel. He further claims that unnamed personnel from both the CIA and the FBI approached him to "tone down" his rhetoric and not appear at a rally on Lafayette Square when he was still serving in Congress. When he refused their request, he recounts they were able to persuade him to wear body armor to the rally. *See A Deadly Misunderstanding*, at 1-2. However, while it is the practice of the FBI to document all such threats to public officials and the issuance of controlled property such as body armor, a search of the FBI's computer network does not memorialize any such threat directed at a Siljander, a sitting member of Congress, nor the issuance of body armor. Moreover, an all-Bureau lead returned no responses to confirm the existence of Siljander's assertions.

Later on, Siljander claims that he visited Libya, in violation of what he acknowledged were "strict US sanctions," in order to conduct his own diplomacy and help change the course of Libyan relations with the rest of the world. As Siljander put it:

> This would be the most difficult trip to pull off of any we'd ever taken, in a strictly logistic sense. It would also be the most dangerous. Because strict US sanctions were in place, we couldn't legally travel to Libya using U.S. passports. We couldn't secure visas or plane tickets for Libya. And if we somehow managed to get into the country, we would be constrained by US law from spending any currency. Buying a slice of bread or a taxi would be a criminal act. With Mathieu's help, we were able to surmount all these hurdles by concocting a plan that felt a bit like the setup for an elaborate heist, yet was (according to all the advice we could muster) technically legal.

A Deadly Misunderstanding, at 87-88. As Siljander explains it, he flew into Tripoli without a passport on Libyan leader Moammar Qaddafi's private plane, falsely marked as an air ambulance. There, according to his telling, he met with Libya's Foreign Minister, Dr. Omar el-Montasser, personally (and without any authorization) apologized "for our country's killing of Colonel Qaddafi's daughter Hanna," after which they clasped hands and prayed together. *Id*. at 94-5.

Finally, Siljander relies on numerous letters from his fellow members of the Fellowship (also known as "the Cedars") to speak to his good character. The Fellowship is a religious and political organization that hosts the annual National Prayer Breakfast in Washington D.C. Many current and former politicians are members, and the group has been described as secretive and powerfully influential. *See* Roig-Franzia, Manuel, "The Political Enclave That Dare Not Speak Its Name," *The Washington Post* (July 18, 2009). Additionally, members of the group are known to be loyal to one another. The loyalty has been described as follows, "Typically, one person grows desirous of pursuing an action – a piece of legislation, a diplomatic strategy – and the others pull in behind." Jeff Sharlet, *The Family*, 264-65 (Harper, 2008). It should come as no surprise to the Court that

Siljander, a former member of Congress and a member of the Fellowship, should be able to obtain numerous letters of reference from current and former politically connected people. The fact that Siljander is unable to provide independent corroboration for many of his alleged charitable activities should give the Court pause. Siljander has not credibly demonstrated that his good works rise to the level of being "truly exceptional." His motion for a downward departure on this basis should be denied.

Siljander has also sought a downward departure under U.S.S.G. § 5K2.20, claiming that the crime was a spontaneous, thoughtless act that was simply aberrant behavior and, therefore, that a downward departure is appropriate. To be entitled to a dowward departure under U.S.S.G. § 5K2.20, the "offense must have been a single criminal occurrence or transaction that was committed without significant planning, was of limited duration, and represented a marked deviation by a defendant from an otherwise law-abiding life." "It must have been a spontaneous and thoughtless act." *United States v. Bueno*, 443 F.3d 1017, 1023, (8th Cir. 2006), *citing United States v. Weise*, 89 F.3d 502, 507 (8th Cir. 1996). In the present case, as described more fully below, registering under FARA requires more than filling out a form. It requires an ongoing obligation to provide detailed information regarding, among other things, activities conducted on behalf of foreign principals. *See* 22 U.S.C. § 612. Additionally, Siljander affirmatively sought to conceal his activities by directing that the IARA funds be funneled through non-profit entities. (*See* Exh. 8.)

Finally, Siljander lied to federal agents during two interviews. On December 13, 2005, he made up an elaborate story about the payments being "donations" for a book project. On April 26, 2007, with his attorneys sitting next to him in a conference room proffer session, after having signed a letter acknowledging that he could be prosecuted for providing false information, Siljander lied

again about the source and purpose of the payments. Far from being spontaneous and thoughtless, Siljander went to great lengths to conceal his relationship with IARA. His motion for a downward departure under 5K2.20 should be denied.

D. Analysis of the Factors Enunciated in 18 U.S.C. § 3553(a) Demonstrates that a Significant Sentence is Appropriate

1. Nature and Circumstances of the Offense

The government of the United States has determined as a matter of foreign and national security policy that agents of foreign principals must identify themselves and declare their activities prior to acting on behalf of those principals. As an initial matter, it is important to understand that registering under FARA requires more than simply filling out a form indicating that one represents a foreign principal. Rather, a FARA registration is a comprehensive, detailed, amount of publicly filed information occurring during the entire active status of a registration - using numerous forms and other submitted materials - that together allow a registrant/foreign agent to fully comply as Congress intended. *See* 22 U.S.C. § 612. These documents include copies of complete contracts and detailed supplemental statements that "drill down" to extensively show fees earned, expenses incurred, subcontractor partnerships, political meetings with policy makers, and categories and occurrences of media dissemination, etc. *Id*. The public availability and transparency of this information, alerts United States officials and the public as to a foreign principal's agenda in the United States, which may include efforts to secure favor, raise funds, or direct perception management and public relations images in an attempt to influence Congress or other public officials. Such information is therefore available for the public, Congress, and other officials to

evaluate such agendas for various purposes, including any impact on national security. Violation of FARA is a serious offense, punishable by up to five years in prison. *See* 22 U.S.C. § 618.

Siljander's sentencing memorandum mischaracterizes and minimizes his violations as a "spontaneous and thoughtless act," and a "single transaction/occurrence." (D.E. 628:20-22.) This characterization is belied by the facts. As noted above, Siljander did more than just omit filing the proper notice with the Attorney General. Siljander was a former lawmaker and former registered lobbyist who certainly knew the rules and detailed disclosure requirements. By failing to register and provide information regarding his activities on behalf of IARA, Siljander continually hid from officials all the required detailed information regarding his activities in representing a foreign principal under investigation for funding terrorist activities. Additionally, in exacerbating the seriousness of the offense, Siljander tried to hide his activities and his relationship with IARA, by having the IARA funds transferred through non-profit entities. (*See* Exh. 8.)

Regarding Siljander's obstruction of justice, his December 13, 2005, denial to FBI agents was far from "thoughtless" – he had concocted an elaborate story about the payments being "donations" for a book project.[5] And his second set of false statements, more than a year later, were even less "thoughtless." He made those false statements on April 26, 2007, with his attorneys sitting next to him in a conference room proffer session, after having signed a letter acknowledging that he could be prosecuted for providing false information.

The Government respectfully submits that the Court ought give considerable weight to the nature and circumstances of the defendant's crimes in fashioning a sentence.

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[5]After he was indicted in this case, Siljander published a book written by ghost-writer John David Mann. *See* Mark D. Siljander with John David Mann, *A Deadly Misunderstanding A Congressman's Quest to Bridge the Muslim-Christian Divide* (Harper One, 2008).

2. History and Characteristics of the Defendant

The bulk of the defendant's sentencing memorandum is devoted to a discussion of his history and characteristics, supported by numerous letters of recommendation filed with the Court. This evidence, the defendant contends, supports his argument that he receive a departure or below-Guidelines sentence, based on his history and characteristics, and his argument that his crimes were "abberrant behavior."

Unlike many defendants, Siljander, as a former lawmaker and lobbyist, has opportunities and access to some of the most influential people in the world. It should come as no surprise to the Court that Siljander would be able to trade on this access in order obtain numerous letters of reference. Indeed, it was his own confidence in his ability to influence public officials that led Siljander down the road with IARA. He saw an opportunity to make money representing IARA; instead of following the law, he chose to violate the law by concealing his representation and activities from the appropriate public officials. One might speculate regarding the motives behind Siljander's desire to avoid being publicly associated with an organization under investigation for financing terrorism activities. However, the fact of the matter is that unlike many defendants who appear before this Court and cite troubled backgrounds to explain their criminal activity, this defendant, despite his privileged background and opportunity, sought to act above the law. Siljander, as a former member of Congress, former Deputy Ambassador to the United Nations, and self-styled international ambassador of good will, should be held to the highest of standards. In essence, what he did in the current case was capitalize on his former positions to get IARA to give him money, and knowingly violated the law in order to enrich himself.

According to a May 13, 2006, *Washington Post* article, Siljander (not the State Department) hosted a visit to the United States by Sudan's deputy foreign minister, Ali Karti (Karti). (*See* Exh. 9.) Sudan is on the State Department's list of state-sponsors of terrorism (*see* Exh. 10), and as noted in the article, Karti is widely considered to have been involved in major human rights violations in Darfur. When the Post's reporter began looking into this situation, Siljander minimized the extent of his involvement in Karti's visit.[6]

Another of Siljander's acquaintances, discussed in his book, is the President of Sudan, Omar al-Bashir (Bashir). The Interntional Criminal Court has issued two arrest warrants against Bashir for his involvement in war crimes, crimes against humanity, and genocide. (*See* Exh. 12.) The transcript of a speech Siljander gave at Oxford University refers to Bashir as "a person I have courted friendship with over the last nine years." (*See* Exh. 13.)

As previously mentioned, Siljander has repeatedly held himself out to the public as having both an honorary and an earned Ph.D. (*See* Exh. 14.) While Siljander may possess diplomas from Coral Ridge Baptist University (Coral Ridge) and George Wythe College, now known as George Wythe University (collectively, "Wythe"), two unaccredited institutions known to be diploma mills, neither constitutes an earned Ph.D. It appears that Coral Ridge no longer exists, but as for Wythe, Siljander paid $2,700, wrote a 10-page "dissertation," and received a "doctorate."[7]

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[6]It is interesting to note, however, that Siljander's involvement with Karti and the Government of Sudan is much more extensive that he was willing to publicly acknowledge. For instance, Karti visited Siljander's clubhouse in suburban Washington D.C., along with the Sudanese ambassador and Defendant El-Siddig. Siljander paid the club $400 for "2 rooms for 3 nights plus 2 breakfasts" for "the Sudanese guests' stay." (*See* Exh. 11.)

[7]*See* Exhs. 15-17. One week after Siljander completed his one page application, Wythe wrote to advise he had been accepted into the Ph.D. program in political economy with a minor in international relations. (Exh. 15.) Wythe advised that Siljander need only complete 15 credit hours.

Academicians might be concerned that Siljander received his degree for a work containing no original research, empirical data, or citations to primary literature, and no theoretical findings to advance the field of study. Rather, the "dissertation" is simply a descriptive account of his involvement in InterBank's criminal enterprise and his own, subsequent attempts to find loopholes in the U.S. immigration laws. Authorities in Utah might be concerned that Siljander held himself out as "Dr. Siljander" and claimed to hold an earned Ph.D. in apparent violation of the Utah regulations governing Wythe. ("A person may not represent him or herself in a deceptive or misleading way, such as by using the title 'Dr.' or 'Ph.D.' if he or she has not satisfied accepted academic or scholastic requirements." Utah Admin. Code § 152-34-11.) However, relevant to this sentencing, it is deeply disturbing that Siljander obtained this degree by claiming he was solely responsible for an enterprise that landed his two cohorts in federal prison.

According to Siljander's biographical information on his business website (*see* Exh. 14), he received various leadership awards, including the "1996 Mohandas K. Gandhi International Peace Award," for ". . . recognition of his courageous statesmanship in international reconciliation." The Government has been unable to confirm even the existence of a "Mohandas K. Gandhi International Peace Award," which appears to be similarly named to The International Gandhi Peace Prize, awarded annually by the Government of India, of which Siljander was not a recipient.[8] Neither did Siljander receive the Gandhi Peace Award, an annual award bestowed by the peace education

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While Siljander subsequently changed his major to international business, he met the stated 15 credit hours standard by completing BUS 895, the class for which he received credit for authoring a dissertation. (Exh. 16.) In fact, his dissertation consists of an essay a little over ten pages long. (*See* Exh. 4.) For this degree, Siljander paid $2,700. (Exh. 17.)

[8] In 1996, this was awarded to A.T. Ariyaratne. (*See* http://en.wikipedia.org/wiki/International_Gandhi_Peace_Prize).

organization Promoting Enduring Peace for "contributions made in the promotion of international peace and good will."[9] The Government suspects that Siljander's award, if it exists, came from the "Gandhi Memorial International Foundation," a controversial non-profit organization run by Yogesh K. Gandhi, also known as the Mahatma Gandhi International Foundation. That organization that has been involved in various frauds unrelated to the defendant. *See* http://hsgac.senate.gov/public/_archive/11.pdf.

3. The Sentence Should Promote Respect for the Law, and Serve as a Deterrent for Those Who Intentiionally Disregard an Important Law

Finally, in fashioning an appropriate sentence, the Government submits that a strong sentence will promote respect for the law and provide a strong deterrent for those who feel that they are above the law.

Those in the business of peddling influence pay close attention to penalties meted out to colleagues, like Siljander, who violate the law. They carefully calculate how close to – or how far past – the line between legality and illegality they may venture in order to collect their fees, and what the possible consequences might be. A sentence fully reflecting the serious nature of the crime will serve as a warning to those tempted to break the law on behalf of foreign principals, and those who may have occasion to consider their response when federal agents contact them to discuss investigations important to the security of our nation.

In summation, a significant sentence is both justified and necessary.

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[9]In 1996, this award went to the New Haven/León Sister City Project. (*See* http://en.wikipedia.org/wiki/Gandhi_Peace_Award).

IV. Conclusion

For the foregoing reasons, the Government respectfully recommends that the Court sentence the defendant to a 16 month term of imprisonment on Count 32, and at least a 36 to 48-month term of imprisonment on the single-count Information, both terms to run concurrently, followed by a three-year term of supervised release. Such a sentence is consistent with the serious nature of the offenses, and with the other factors enumerated in 18 U.S.C. § 3553(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on January 9, 2012, to the CM-ECF system of the United States District Court for the Western District of Missouri, and that a copy was delivered by electronic mail to counsel of record for the defendant.

/s/ Anthony P. Gonzalez
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